

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of) MB Docket No. 14-82
)
PATRICK SULLIVAN) FRN 0003749041, 0006119796,
(Assignor)) 0006149843, 0017196064
)
and) Facility ID No. 146162
)
LAKE BROADCASTING, INC.) File No BALFT-20120523ABY
(Assignee))
)
Application for Consent to Assignment of)
License of FM Translator Station W238CE,)
Montgomery, Alabama)

To: Marlene H. Dortch, Secretary
Att: Chief Administrative Law Judge Richard L. Sippel

**RESPONSE TO ENFORCEMENT BUREAU'S COMMENTS
ON THE COMMISSION'S *TITUS* DECISION**

Lake Broadcasting, Inc. ("Lake") by its counsel, hereby responds to the Enforcement Bureau's December 8, 2014 "Comments on the Commission's *Titus* Decision" ("Comments"). The Comments were submitted in response to the Presiding Judge's Order, FCC 14M-35, rel. Nov 20, 2014. The Bureau elected to submit its comments separately from the parties' December 8, 2014 "Joint Status Report," which contained Lake's comments on the Commission's *David Titus* decision. Because the Bureau did not afford Lake an opportunity to review and comment on the Bureau's Comments before they were filed, Lake is submitting this separate Response.

1. The Hearing Designation Order ("*HDO*") herein, DA 14-703, rel. May 23, 2014, is an interlocutory order prepared by the Commission's Media Bureau, and the December 8, 2014 Comments represent the views of the Commission's Enforcement Bureau. Neither document is a final Commission decision, and, thus, neither document is a binding pronouncement of

Commission law or policy. The Enforcement Bureau's Comments do **not** represent Commission law or policy – only what the Bureau would **like** that law and policy to be.

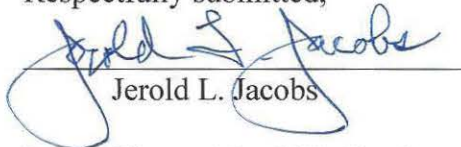
2. Contrary to the Comments (at Para. 3), *Titus* does NOT establish “a **very high bar** for a licensee or applicant who is an adjudicated sex offender to demonstrate that he has been rehabilitated and is qualified to be or remain a Commission licensee” (emphasis added). Rather, *Titus* states, at note 54, that “once a party having the burden of proof comes forward with a *prima facie* and substantial case, that party will prevail unless its case is discredited or rebutted”. In the instant case, Lake intends to present substantial evidence of Mr. Rice's rehabilitation, and then the Bureau will have to try to discredit or rebut it.

3. Next, the Comments quote language from note 60 of the *HDO* to the effect that the crimes of which Mr. Rice was convicted may have been “so egregious” that he can be deemed qualified to be a licensee “only in the most extraordinary and compelling of circumstances”. Lake submits that the Bureau's position is erroneous in two critical respects: (1) “egregious” is a wholly subjective term, and the Bureau will not be able to show that Mr. Rice's convictions qualify as such under Missouri law or as a general matter; and (2) the licensing standard of “only in the most extraordinary and compelling of circumstances” goes beyond the 1986 and 1990 *Policy Statements*, neither of which contains any such language. That pseudo-standard has been made out of whole cloth in the *HDO* and does not represent an accurate or judicially sustainable standard for Commission licensure in this proceeding.

4. Next, the Comments (at Para. 4) mistakenly assert that *Titus* requires the Presiding Judge to afford “considerable deference” to the mere determination by state law enforcement authorities to place a convicted felon on a sex offenders list. *Titus* says no such thing, especially where, as in Missouri, the placing of Mr. Rice on the Missouri sex offenders registry is not a **discretionary** act by local enforcement authorities, but rather was **mandatory** under state law.

5. Finally, the Comments (at Para. 7) wishfully assert that if the Bureau can conclusively determine that Mr. Rice is a risk to his community, *Titus* may allow the Presiding Judge to expedite the trial or even grant summary decision against Lake. Alas, this wishful thinking demonstrates what is wrong with the Bureau's entire approach to this proceeding. It is now clear that the Bureau mistakenly believes that it is relitigating the *Titus* case here, instead of the Lake case. It refuses to see that the law and the facts are completely different in the two cases. That is why, as stated in the December 8 Joint Status Report, Lake has retained the services of a Missouri criminal law expert, who will prepare a report analyzing the Missouri sex offender program and registry, explaining how it applies to Mr. Rice and contrasting it with the law and facts in Washington State and in *Titus*. Lake believes that Ms. Carter Law's report and testimony in this proceeding will be sufficient to resolve any legal questions raised by the *Titus* case as they apply to Mr. Rice and will lead the way to grant of Lake's pending assignment application.

Respectfully submitted,



Jerold L. Jacobs

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Dated: December 15, 2014

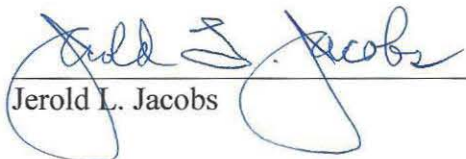
CERTIFICATE OF SERVICE

I, Jerold L. Jacobs, hereby certify that on this 15th day of December, 2014, I filed the foregoing "Response to Enforcement Bureau's Comments on the Commission's Titus Decision" in ECFS and caused a copy to be sent via First Class United States Mail and via e-mail to the following:

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